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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 NATIONAL ABORTION FEDERATION (NAF),

Case No. 3:15-cv-3522

13 Plaintiff,

Judge: Hon. William H. Orrick, III

14 v.

15 THE CENTER FOR MEDICAL PROGRESS,
BIOMAX PROCUREMENT SERVICES LLC,
16 DAVID DALEIDEN (aka "ROBERT SARKIS"),
AND TROY NEWMAN,

17 Defendants.
18
**MOTION OF STATE ATTORNEYS
GENERAL FOR LEAVE TO PARTICIPATE
AS AMICI CURIAE**

Hearing Date: September 1, 2015
Time: 10:00 a.m.
Location: Courtroom 2, Floor 17

Date Action Filed: July 31, 2015
Trial Date:

20 The duly elected Attorneys General for the States of Alabama, Arizona, Michigan, and
21 Oklahoma ("Proposed Amici") request leave of this Court to file the attached brief and to participate as
22 *amici curiae* in any matters pertaining to the scope the Court's injunctive relief as it relates to
23 Defendants' response to subpoenas or other requests from law enforcement. The Attorneys General are
24 constitutional officers and the chief law enforcement officers of their respective states. They enforce
25 their states' criminal and civil laws. Proposed Amici thus have an overriding interest in preserving their
26 abilities to carry out their duties. To the extent that this Court's temporary restraining order (Dkt. Nos.
27 15, 27, and 34), or a subsequent preliminary or permanent injunction, were to enjoin or place conditions
28 on the production of documents or testimony pursuant to a duly issued subpoena or other request, the

1 states' ability to carry out their duties is threatened. In addition, this case could create precedent for
 2 other cases far beyond the specific facts – and even industry – involved here. Without taking any
 3 position on the outcome or the merits of the underlying suit, Proposed Amici request leave to participate
 4 as *amici curiae*.

5 **I. THIS COURT HAS AUTHORITY TO ACCEPT AMICUS BRIEFS AND PERMIT
 6 AMICI TO PARTICIPATE IN COURT PROCEEDINGS.**

7 District Courts possess the inherent authority to allow the participation of *amici curiae*. *In re*
 8 *Bayshore Ford Truck Sales, Inc.*, 471 F.3d 1233, 1249 n.34 (11th Cir. 2006); *Jin v. Ministry of State*
 9 *Security*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *United States v. Davis*, 180 F. Supp. 2d 797, 800
 10 (E.D. La. 2001). Moreover, courts frequently welcome *amici* participation “concerning legal issues that
 11 have potential ramification beyond the parties directly involved or if the amicus has ‘unique information
 12 or perspective that can help the court beyond the help that lawyers for the parties are able to provide.’”
 13 *Sonoma Falls Developers, LLC v. Nevada Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal.
 14 2003) (internal citations omitted); *see also Cobell v. Norton*, 246 F. Supp. 2d 59, 62 (D.D.C. 2003). A
 15 potential *amicus* “must merely make a showing that [its] participation is useful and otherwise desirable
 16 to the court” *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C-06-1254, 2007 WL 81911, at *3
 17 (N.D. Cal. Jan 9, 2007) (internal citations and quotation marks omitted).

18 In two recent cases, this Court permitted the Federal Trade Commission to participate as *amicus*
 19 *curiae* based on its interest in enforcing the FTC Act, which is analogous to the some of the state laws
 20 that Proposed Amici enforce. *See Nwabueze v. AT&T, Inc.*, No. 3:09-cv-1529-SI, at Dkt. No. 227 (N.D.
 21 Cal. Sept. 25, 2013) (granting unopposed *amicus* application by FTC); *Moore v. Verizon*
 22 *Communications, Inc.*, Case No. 4:09-cv-1823-SBA, at Dkt. No. 140 (N.D. Cal. Aug. 23, 2012) (same).
 23 The role that Proposed Amici seek is well-established and proper.

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1 **II. PROPOSED AMICI WILL AID THE COURT IN UNDERSTANDING THE INTERESTS**
 2 **OF STATE ATTORNEYS GENERAL AND THE IMPACT OF A POTENTIAL RULING**
 3 **ON SEPARATE INVESTIGATIONS THAT HAVE BEEN COMMENCED OR MAY BE**
 4 **COMMENCED.**

5 In order to fulfill their duties, the Attorneys General need to be able to conduct meaningful
 6 investigations. Many states vest their Attorneys General with subpoena power. For example, the
 7 Arizona Attorney General has the power to require examinations under oath and to examine any
 8 merchandise, record, book, document, account or paper as he may deem necessary. Ariz. Rev. Stat.
 9 § 44-1524; *see also* Ariz. Rev. Stat. § 44-1526. Moreover, information obtained by the Attorney
 10 General is confidential under Arizona law. Ariz. Rev. Stat. § 44-1525. This is but one example. While
 the particularities of other states' laws may differ, the importance of the power to investigate efficiently
 is consistent.

11 Finally, the Attorneys General of the various states have been vigorous in protecting their rights
 12 to conduct investigations. For example, in the recent case of *Google, Inc. v. Hood*, **forty state Attorneys**
 13 **General** filed an amicus brief in the Fifth Circuit arguing against a cramped interpretation of *Younger*
 14 abstention that would permit a federal court to enjoin a subpoena related to a state consumer protection
 15 investigation. *See Brief of Jack Conway, Attorney General of the Commonwealth of Kentucky, et al.,*
 16 *Google, Inc. v. Hood*, No. 15-60205 (5th Cir., filed Jun 29, 2015). Thus, Plaintiff's contention that it is
 17 "blackletter law that investigations are not 'state judicial proceedings' and do not warrant abstention by
 18 federal courts" is simply wrong. (*See* Dkt. No. 89 at 8.) This is a major national issue that to counsel's
 19 knowledge has not been resolved in this circuit, and any ruling will have far-reaching implications
 20 beyond these parties, and even this industry.

21 **III. CONCLUSION**

22 For the foregoing reasons, Proposed Amici request leave of this Court to file the attached brief
 23 and to participate as *amici curiae* in any matters pertaining to the scope the Court's injunctive relief as it
 24 relates to Defendants' response to subpoenas or other requests from law enforcement.

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1 Dated: August 29, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I am a resident of the State of Arizona and over the age of 18 years, and I am not a party to this action. My business address is 1275 W. Washington St., Phoenix, AZ 85007. On August 29, 2015, I served the foregoing MOTION OF STATE ATTORNEYS GENERAL FOR LEAVE TO PARTICIPATE AS AMICI CURIAE by filing the document using the CM/ECF system, which will send a notice of electronic filing to:

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